

## **ZONING AND ADJUSTMENT BOARD**

***May 18, 2009***

The Zoning and Adjustment Board of Sumter County, Florida, convened on Monday, May 18, 2009, at 6:30 pm with the following members present: Larry Story – Chairman, Ron Berry, Nathan Yoder, Dossie Singleton, Frank Topping, Bailey Cassels, Frank Szczepanski, Brad Shepherd, Jessica Garner, Woody Hill and Bob Hunt.

Members Richard Cole and Marge Thies were absent.

Brad Cornelius, Planning Manager, and Sandy Cassels, Recording Secretary, were present. Derrill McAteer, Zoning and Adjustment Board Attorney, was also present.

Chairman Larry Story called the meeting to order.

Mr. Hill led the pledge of allegiance and Mr. Berry led the prayer.

Mr. Story presented the proof of publication.

Mr. Topping made a motion to approve the minutes from the May 4, 2009, meeting. Mr. Berry seconded the motion, and the motion carried.

Mr. Story explained the Zoning and Adjustment Board hearing is a Quasi-Judicial hearing and only competent, substantial, fact based testimony or evidence will be considered by the Board in deciding the quasi judicial matters.

Mr. Story stated “If you plan to speak during any of the public hearing, please rise and be sworn”. Those wishing to speak were sworn in by Sandy Cassels, ZAB secretary. Mr. Story stated, “Finally, please state your name, address, and whether or not you have been sworn when you approach the podium to speak.”

### ***S2009-0001***

#### ***David & Barbara Shelley, et al – Special Use Permit to allow the spreading of liquid septage residuals***

Mr. Berry made a motion to remove this application from the table. Mr. Topping seconded the motion, and the motion carried.

David Shelley, applicant, and Al Ford, attorney for the applicant, were present and requested a Special Use Permit to allow the spreading of liquid septage residuals. There were 18 notices sent. Of the 18 notices sent, 10 were returned in objection and 4 were returned in favor.

Mr. Story polled the Board members for ex parte communications, written or verbal, related to this case. Frank Szczepanski – none, Woody Hill – none, Bob Hunt – none, Dossie Singleton – none, Nathan Yoder – yes: Mr. Shelley contacted Mr. Yoder and answered questions regarding to the application, Bailey Cassels – none, Ron Berry – yes: Mr. Dunkum contacted Mr. Berry to inform him of his opposition of the application; Jerry Carter contacted Mr. Berry to inform him of his opposition of the application; and Mr. Berry visited the site. Mr. Berry also spoke to Commissioners Mask and Breeden, and Ronnie Hawkins, Property Appraiser regarding the application. Brad Shepherd – yes; he visited the site; spoke to Jerry Carter who informed him of his opposition, and to James Wade, Attorney, and Commissioner Mask. Frank Topping – yes; and stated Mr. Shelley contacted him, but Mr. Topping refused to speak to him. Jessica Garner – yes; she visited the site and questioned the applicant on the residual application process. Larry Story – yes; he spoke to Mr. Shelley three times and received samples of the product in various stages of the process.

Mr. Cornelius summarized the letters of objection and stated we received an additional letter of objection, Mr. Rupert Dunkum on Friday, May 15, 2009, and correspondence from Mr. Ford and Mr. Wade on Monday, May 18, 2009, which are within the project file.

Mr. Cornelius discussed the application and criteria for the spreading of septage, and waste water residuals according to the Sumter County Land Development Code (LDC), Section 13-143 and Section 13-645. Mr. Cornelius explained the LDC identifies this use is beneficial in the agricultural industry, and if managed correctly, does not generally create problems related to traffic safety, odor, or flies. Section 13-645 of the LDC gives specific times and setbacks for the spreading of septage. The use must be in harmony with the purpose and intent of this chapter and compatible with surrounding uses and existing and anticipated land use patterns in the area. The site must also be suitable for the proposed use. Mr. Cornelius explained the general location for this request is in the Future Land Use of Agricultural with some residences and is adjacent to the City of Wildwood on the northeast and adjacent to the Sumter/Lake County Line. There are some Developments of Regional Impacts (DRI) in the area, which are at this time not in the development stage. The area could have an increase in traffic of up to 5% which would equal approximately 140 trips a day, and this application is only requesting approximately 8 trips a day. The Sumter County Public Works Department is not requesting the applicant add any turn lanes due to the proposed number of trips. Mr. Cornelius stated the County consultants, Tetra-Tech, reviewed the application and initially found the application to be insufficient in the assessment of wetlands. The applicant responded to Tetra-Tech's analysis of the project with an updated wetland analysis. Tetra-Tech reviewed the analysis and discovered it was sufficient. Mr. Cornelius discussed the setbacks, where the spreading could be applied and when the spreading could be applied. Mr. Cornelius stated there could be no spreading during flooding or pooling (standing) water. In addition to the County requirements for the spreading of liquid residuals, the applicant will be monitored by the Florida Department of Environmental Protection (FDEP) and Southwest Florida Water Management District (SWFWMD). Mr. Cornelius stated on April 22, 2009, the applicant received notice of Unauthorized Construction. This Notice advises the property owner/applicant of SWFWMD's observance of clearing and filling of wetland, floodplains, and ditches on the subject property without an Environmental Resource Permit (ERP) and it "appears" to be in violation of Florida Statute and Florida Administrative Code. Mr. Cornelius discussed the conditions to be placed on the SUP for approval. The conditions are as follows: 1) Only liquid septage residuals shall be land applied to the subject property that are processed at Shelley's Residuals/Septage Management Facility in Zellwood, Florida. 2) Shall be transported to prevent leakage or spillage. Any spills or leaks shall be cleaned within 24 hours by the hauling company. 3) Shall not be stockpiled, except for a minimal period of time from dumping to actual spreading, but in no event shall it be stockpiled more than 48 hours and must be further than 1,320 feet of any occupied building. 4) The land application shall be limited to those areas identified in Exhibit 3. 5) Shall not be land applied when there is standing water in an application zone or into open water bodies. 6) The land application shall only occur on Monday through Saturday and shall not be transported, dumped, or spread on any national, state, or county holiday, nor after one hour past sundown or one hour prior to sunrise on any given day. 7) Shall only be spread in amounts necessary and beneficial for agronomic purposes. Septage may not be spread in amounts in excess of established agronomic standards for the specific crops involved. 8) Shall be applied to assure uniform application over the application zone. 9) Shall be applied in a manner to minimize the formation of aerosols. 10) Access shall be limited to the existing access on C-48E. 11) No more than an average of 8 tankers per day may access the subject property for the land application. Each tanker shall not exceed a capacity of 6,000 gallons. 12) If the County utilizes a consultant for the enforcement of the conditions of this Special Use Permit, then the property owner/applicant shall reimburse the County within 90 days of the demand for payment sent to the property owner/applicant by certified mail for the actual cost of the consultant for the enforcement activities. Failure to reimburse the County shall result in the immediate expiration of this Special Use Permit. 13) Copies of all reporting related to the land application to FDEP, SWFWMD, and any other state or Federal regulatory agency shall be provided to the County. 14) County personnel shall be allowed to access the application sites at all times to perform unscheduled monitoring inspections. 15) Suspension, expiration, or revocation of the FDEP permit or approval for use of the subject property for land application shall result in the immediate suspension, expiration, or revocation of this Special Use Permit. 16) If the SWFWMD Notice of Unauthorized Construction, dated April 22, 20089, Exhibit 4, results in a final determination of violation by SWFWMD, then this Special Use Permit shall immediately expire. 17) This

Special Use Permit shall expire two years from the date of approval. At the conclusion of the two year period, the applicant may re-apply to renew the Special Use Permit. 18) This Special Use Permit is only valid for the current property owners. Sale or transfer of the subject property shall result in the expiration of this Special Use Permit. 19) Notwithstanding the previous expiration conditions, this Special Use Permit may also be suspended or revoked by the Zoning and Adjustment Board consistent with Section 13-144(e), Sumter County Land Development Code.

Mr. McAteer explained due process, the law and competent, substantial, fact based testimony or evidence were the proper basis and procedure for consideration and vote on the matter.

Mr. Topping questioned Mr. Cornelius about who will perform the unscheduled inspections. Mr. Cornelius stated the County, Environmental Health, and the other permitting agencies will be performing the inspections. Mr. Berry asked Mr. Cornelius if he had calculated the usable acreage of the property, in which Mr. Cornelius stated he had not.

Mr. Ford discussed the rate at which the liquids will be applied and stated the application process is equal to about 1 ½ inches of rain per acre. Mr. Ford also stated the total approximate usable acreage is between 250 and 300 acres. Mr. Ford stated he believes the applicant is entitled to the permit as an agricultural use on the subject property. Mr. Ford and Mr. Shelley explained the process to create the liquid from the time it arrives at the plant in Zellwood to the time it is applied. Mr. Shelley stated he opened his company in the early 1990's, when the liquids were not treated at the levels they are now.

Mr. Topping questioned Mr. Shelley on his place of residence. Mr. Shelley stated he resides in Apopka during the week and on the subject property on the weekend. Mr. Topping asked Mr. Shelley where the product is initially obtained prior to delivery at the Zellwood treatment facility. Mr. Shelley stated he receives the product from 5 counties and municipalities. Mr. Topping asked Mr. Shelley if he farms the land on which he wishes to spread the liquids. Mr. Shelley stated he allows cows to graze on the property. Mr. Story asked Mr. Shelley to explain the time limits for grazing animals to be rotated on the sprayed property. Mr. Shelley stated the State requires a 30 day rotation. Mr. Berry and Mr. Shelley discussed the Bermuda grass grown on the property, uses for the grass, and the growth pattern of the grass.

Mr. Shepherd asked Mr. Shelley if the reused water the Villages use to water the golf course grass is the same type of liquid he is planning on using. Mr. Shelley stated there is a difference between the liquids and explained the difference. Mr. Topping discussed the process to create the reclaimed water the Villages use to water the golf courses. Mr. Berry discussed the visit he made to the Shelley property. Mr. Szczepanski stated there is an odor on the golf courses when they are sprayed.

Mr. Ford reminded the members to remember this case must be decided on the law and facts, not feelings. Mr. Ford explained the agricultural benefit of the liquid residual spreading. Mr. Cassels asked Mr. Shelley to explain the difference in the process for the liquid residuals vs. reclaimed water. Mr. Shelley stated liquid residuals use lime and reclaimed water uses chlorine as a neutralizing agent. Ms. Garner asked Mr. Shelley what the average water table is on the subject property. Mr. Shelley stated the average water table is 36" and he can not apply if the water table is at 24" or less. Mr. Shelley stated he has monitoring wells on his property that are monitored daily to check the water table and the depth is recorded and must be made available upon request of FDEP and SWFWMD.

Mr. Gay, audience member, spoke against the SUP. Mr. Gay stated he has medical conditions and when there is spraying done on the property he does not have usage of his property. Mr. Cornelius stated the applicant has been spraying (or has sprayed) commercial fertilizer only.

James Wade, attorney for Jerry Carter, adjacent property owner, requested his client to be recognized as a third party intervener. Mr. Berry made a motion to accept Mr. Carter as a third party intervener. Mr. Shepherd asked Mr. McAteer to explain a third party intervener. Mr. McAteer explained what a third party intervener is and that interveners are noted in the Sumter County Land Development Code, so the procedure is required. Mr. Szczepanski seconded the motion, and the motion carried.

Mr. Wade stated he would like to cross examine Mr. Shelley and asked Mr. Shelley to explain Class "B" Sludge. Mr. Ford objected to this question as the application had been amended. Mr. Shelley explained the process of taking the solid (cake) to a liquid. Mr. Wade asked Mr. Shelley how the materials arrive on the property. Mr. Shelley stated the materials arrive via tanker. Mr. Wade asked Mr. Shelley to explain the process of the material getting from the original site to his plant on the property for application, in which Mr. Shelley explained the steps. Mr. Wade asked Mr. Shelley to explain the number of gallons to be spread and how long between applications. Mr. Shelley stated there is a rotation of 30 days between applications on each section of the property and each application is approximately 6,000 gallons. Mr. Wade asked Mr. Shelley if the cities pay him for the liquid. Mr. Shelley stated he pays the cities a tipping fee. Mr. Wade asked Mr. Shelley if the reason for the application is the avoidance of tipping fees. Mr. Shelley stated the application at this site will cost a little more in fuel than transporting to the cities; therefore, it really is not a cost saver. Mr. Wade asked Mr. Cornelius if the applicant could change what is being applied. Mr. Cornelius stated the only way the applicant could change the application materials would be to amend the application.

Mr. Story called for a recess at 8:25 p.m. The meeting resumed at 8:37 p.m.

Mr. Wade asked Mr. Shelley what type of product was spread on the property within the last couple of weeks. Mr. Shelley explained commercial fertilizer was sprayed and is not sure why it has had an odor. Mr. Wade asked Mr. Shelley if he still spreads his products at High Acres. Mr. Shelley stated he does. Mr. Wade asked Mr. Shelley to explain the difference in the products, in which Mr. Shelley stated this application is for liquid residuals, and solids were spread at High Acres. Mr. Shelley went on to explain how the solids are removed from the raw product to the finished product. Mr. Wade asked Mr. Shelley how many accounts he has to supply the raw product. Mr. Shelley stated he has approximately 300 regular accounts.

Mr. McAteer stated objections would be on the record, but were not being struck from the testimony.

Ms. Garner questioned Mr. Shelley on the difference in the make-up between the liquids and the commercial fertilizer. Mr. Shelley stated that commercial fertilizer has a higher chemical content, with the liquids being natural.

Mr. Wade stated Mr. Carter lives at the southwest corner of the property. Mr. Wade explained the property is prone to a high water table, the spraying will need to be confined to specific areas; there will need to be screening and buffering, enforcement of the conditions and checks by SWFWMD and FDEP, in addition to the county, fear of the reduced property value.

Mr. Carter stated he met with Mr. Berry. Mr. Carter also stated there have been odors the last couple of weeks. Mr. Carter stated he is opposed to the use because it will decrease the usability of his property and he fears it will reduce property values. Mr. Carter stated he checked with Mr. Ronnie Hawkins, Property Appraiser, and the proposed use will bring the property values down by approximately 9%. Mr. Ford objected to the testimony related to property values.

Mr. Ford asked Mr. Carter if he has checked comparable sales in the area. Mr. Carter stated he had not.

Mr. Jack Brandon, attorney for J.K. Stewart Ranch, adjacent property owner, discussed the wetlands off site, the setbacks for the wetlands off and on site, the future development of the Stewart property, the traffic study, the land use being agricultural, and the long term development plans for the area. Mr. Brandon also gave the definition of the application, discussed the original application, the supplements to the application, the poor drainage of the soil types found on the property.

Mr. Brandon then qualified Gerald Hartman, GAI Consultants, as an expert witness. Mr. Hartman discussed the application and his findings on the case. Mr. Hartman showing different aspects of the

application, showing different rules and regulations, discussing the soil types, and the drainage of the property.

Mr. Story discussed with Mr. Hartman the wetlands and the condition of the staff report stating there would be no spraying if the property has any standing water, which would relate to the flooding issues. Ms. Garner discussed the high water table with Mr. Hartman.

(Mr. Topping left the meeting at 9:30 p.m. and returned at 9:35 p.m.)

Ms. Garner asked Mr. Hartman if there was spraying, spreading on other properties in the State with the same types of soils. Mr. Hartman stated there are, and they are also poorly drained.

Mr. Hartman discussed the set backs for the wetlands located off site. Mr. Cornelius discussed off site wetlands, and explained if some were not accounted for and were discovered later, this would reduce the usable amount of property.

Mr. Berry asked Mr. Hartman if the property was sprayed and it rained, would the liquid stay on the property or would it run-off. Mr. Hartman stated in his opinion most of the liquid would stay on site.

Mr. Berry asked Mr. Hartman if he believes thirty days is long enough for the rotation of cattle. Mr. Hartman stated it is.

Mr. Hartman discussed the flood zones, environmental concerns and traffic.

Mr. Cornelius stated there would be no access from CR 558 to the application site, and if the Board chooses to add a condition for approval they could.

Mr. Hartman concluded his testimony with GAI's recommendation for denial.

Mr. Ford asked Mr. Hartman if he is an expert on sludge. Mr. Hartman stated he is not just an expert on sludge. Mr. Ford asked Mr. Hartman if he is an expert on wetlands. Mr. Hartman stated he is not. Mr. Brandon objected to Mr. Ford's line of questioning. Mr. Ford asked Mr. Hartman if he has given other opinions on wetlands and Mr. Hartman stated he has. Mr. Ford questioned Mr. Hartman in regards to the presentation and discussed the analysis. Mr. Hartman explained his analysis.

Mr. McAteer reminded the members of the board and the audience that the applicant is allowed due process for the application.

Mr. McAteer asked Mr. Brandon if his client (J.K. Stewart Ranch) would like to be a party, and Mr. Brandon stated they would.

Bill Messer, Tetra-Tech, county consultant, was called by Mr. Ford. Mr. Messer gave his qualifications to be considered as an expert witness.

Mr. Messer discussed the wetlands, the soil types, and the drainage.

Mr. Story asked Mr. Messer if the off site wetlands were reviewed. Mr. Messer stated they were. Mr. Topping asked if all the property was reviewed including the wetlands on and off site. Mr. Messer stated again the wetlands were reviewed and any setbacks were being met. The off site wetlands have a 400' setback while the on site wetlands have a 200' setback. Mr. Messer also explained changes in the soils due to agricultural uses. Mr. Messer explained there is a more current inventory of wetlands based on field evaluations. Mr. Shepherd asked Mr. Messer if the wetlands are black and white. Mr. Messer stated no the wetlands are not black and white. Mr. Brandon asked Mr. Messer about the wetlands in the northwest corner of the property and the property adjacent to this property. Mr. Messer stated there could be wetlands

in the northwest corner of the property and if there is, the setbacks would apply. Mr. Cornelius stated if wetlands are documented then the setbacks and areas for application will be adjusted.

Mr. Wade reminded the ZAB if this application does not meet the code it needs to be denied.

Mr. Ford stated the applicant is meeting all the criteria required by the county, if the applicant does not follow all the conditions set forth the application can be revoked.

Carine Merritt, audience member, turned in a petition in objection with 185 unverified signatures.

The Board discussed the wetlands, different types of fertilizer, odors, how often the spreading can occur, if the use was truly agricultural, the monitoring and who monitors, a monitoring fee, the proposed residential developments adjacent to the property, a bond for clean-up, flooding, and questioning the product not being solely from Sumter County.

Mr. McAteer reminded the Board that when they make their decision, it needs to be made on fact based testimony in the record.

Mr. Shepherd asked Mr. Cornelius if he was satisfied that the applicant met all the requirements for approval under the present zoning; Mr. Cornelius replied in the affirmative. Mr. Shepherd asked Mr. Cornelius if he was satisfied that all necessary inspection and control mechanisms were in place to assure that the applicant met the zoning requirements and the restrictive stipulations suggested by staff; Mr. Cornelius replied in the affirmative. Mr. Shepherd asked Mr. Cornelius to confirm that the staff recommendation was for a two year approval and that the applicant would have to appear again before this board in two years to renew his application; Mr. Cornelius replied in the affirmative.

Mr. Shepherd made a motion to approve S2009-0001 including all the staff conditions in the staff report. Mr. Hunt seconded the motion, and the motion carried with the following roll call vote: Frank Szczepanski – nay, Bob Hunt – aye, Woody Hill – aye, Dossie Singleton – aye, Jessie Garner – aye, Nathan Yoder – aye, Bailey Cassels – aye, Ron Berry – nay, Frank Topping – nay, Brad Shepherd – aye, Larry Story – aye.

Mr. Berry made a motion to adjourn at 11.25 p.m. Mr. Shepherd seconded the motion and the motion carried.

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Larry Story, Chairman  
Zoning and Adjustment Board